

2007

State of Utah v. Darin Richardson : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mark Shurtleff; Utah Attorney General's Office; Attorneys for Plaintiff.

Jennifer K. Gowans; Randall K. Spencer; Attorneys for Defendant.

Recommended Citation

Brief of Appellant, *Utah v. Richardson*, No. 20070747 (Utah Court of Appeals, 2007).
https://digitalcommons.law.byu.edu/byu_ca3/474

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff, vs. DARIN RICHARDSON, Defendant.	CASE NO. 20070747-CA APPELLANT IS NOT INCARCERATED
--	--

BRIEF OF APPELLANT

**APPEAL FROM DISTRICT COURT’S JUDGEMENT, SENTENCE, AND
ORDER FOR COMMITMENT, IN THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE JUDITH S.H. ATHERTON PRESIDING.**

Mark Shurtleff (4666)
Utah Attorney General’s Office
Appeals Division
160 East 300 South
6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854

Attorneys for the State of Utah

Jennifer K. Gowans (7538)
Randall K. Spencer (6992)
Fillmore Spencer, LLC
3301 North University Avenue
Provo, Utah 84604

Attorneys for Darin Richardson

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff, vs. DARIN RICHARDSON, Defendant.	CASE NO. 20070747-CA APPELLANT IS NOT INCARCERATED
--	--

BRIEF OF APPELLANT

**APPEAL FROM DISTRICT COURT’S JUDGEMENT, SENTENCE, AND
ORDER FOR COMMITMENT, IN THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE JUDITH S.H. ATHERTON PRESIDING.**

Mark Shurtleff (4666)
Utah Attorney General’s Office
Appeals Division
160 East 300 South
6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854

Attorneys for the State of Utah

Jennifer K. Gowans (7538)
Randall K. Spencer (6992)
Fillmore Spencer, LLC
3301 North University Avenue
Provo, Utah 84604

Attorneys for Darin Richardson

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
JURISDICTION	1
STATEMENT OF ISSUES AND STANDARDS OF REVIEW	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. MR. RICHARDSON WAS DENIED HIS STATE AND FEDERAL RIGHTS TO DUE PROCESS OF LAW WHEN THE DISTRICT COURT FOUND HIM IN BREACH OF THE PLEA AGREEMENT BASED ON THE STATE'S UNILATERAL REPRESENTATIONS.....	23
A. The State Due Process Clause Requires an Evidentiary Hearing Before a Finding of Breach Can Be Made	7
B. Even in a Civil Proceeding, Mr. Richardson Was Entitled to a Hearing on the Issue of Breach.....	12
II. IF AN EVIDENTIARY HEARING REVEALS THAT MR. RICHARDSON DID NOT MATERIALLY BREACH THE PLEA AGREEMENT, THE AGREEMENT SHOULD BE RESCINDED AND HIS PLEA WITHDRAWN.....	13
CONCLUSION	16
ADDENDA	
ADDENDUM A: Statement of Defendant in Advance of Guilty Plea and Certificate of Counsel	
ADDENDUM B: Transcript: Sentencing August 17, 2007	

TABLE OF AUTHORITIES

Cases

<i>Allen v. Prudential Property & Casualty Ins. Co.</i> , 839 P.2d 798 (Utah 1992)	11
<i>Acculog, Inc. v. Peterson</i> , 692 P.2d 728 (Utah 1984)	11
<i>Coalville City v. Lundgren</i> , 930 P.2d 1206 (Utah App. 1997)	2, 12-13, 15
<i>Foote v. Board of Pardons</i> , 808 P.2d 734 (Utah 1991)	8, 9
<i>Mabry v. Johnson</i> , 467 U.S. 504 (1984)	7
<i>Olympus Hills Shopping Ctr. Ltd. v. Smith's Food & Drug Ctrs., Inc.</i> , 889 P.2d 445 (Utah App. 1994), <i>cert. denied</i> , 899 P.2d 1231 (Utah 1995)	13
<i>Santobello v. New York</i> , 404 U.S. 257 (1971)	10-11, 15
<i>State v. Bero</i> , 645 P.2d 44 (Utah 1982)	14-15
<i>State v. Bickley</i> , 60 P.3d 582 (Utah App. 2002)	15
<i>State v. Copeland</i> , 765 P.2d 1266 (Utah 1988)	8
<i>State v. Patience</i> , 944 P.2d 381 (Utah App. 1997)	7
<i>State v. Ramirez</i> , 817 P.2d 774 (Utah 1991)	8
<i>State v. Stringham</i> , 17 P.3d 1153 (Utah App. 2001)	1-2, 14
<i>United States v. Calabrese</i> , 645 F.2d 1379 (10 th Cir. 1981)	10
<i>Western Properties v. Southern Utah Aviation</i> , 776 P.2d 656 (Utah App. 1992) ..	11

Statutes

Utah Code Ann. §76-7-2013	2
Utah Code Ann. §78-2a-3	1

Constitutional Provisions

Utah Constitution, Article I, Section 7*passim*

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff, vs. DARIN RICHARDSON, Defendant.	CASE NO. 20070747-CA
--	----------------------

BRIEF OF APPELLANT

JURISDICTION

Appellant, DARIN RICHARDSON appeals from the Judgment, Sentence, and Order for Commitment from the district court. This Court has appellate jurisdiction pursuant to Utah Code Ann. §78-2a-3.

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

ISSUE 1: Was Mr. Richardson denied his state and federal rights to due process of law when, at sentencing, the district court found him in breach of the plea agreement based solely upon the State's unilateral representation that Mr. Richardson breached the agreement?

STANDARD OF REVIEW: "A trial court's ruling regarding the enforceability of a plea agreement is a question of law" that is reviewed for

correctness, “according no deference to the trial court’s conclusions.” *State v. Stringham*, 17 P.3d 1153 (Utah App. 2001) (citations omitted).

The question of whether a breach is material is generally a question of fact “unless the facts are undisputed; then it is a question of law for the court.” *Coalville City v. Lundgren*, 930 P.2d 1206, 1209 (Utah App. 1997). Normally an appellant must marshal the evidence supporting the district court’s findings of fact and demonstrate that such evidence is insufficient to support the court’s findings even when viewed in a light most favorable to the district court. *Id.* at 1210. However, in this case the district court made no factual findings but instead concluded Mr. Richardson had not complied with the plea agreement based on the State’s unilateral representations.

STATEMENT OF THE CASE

On September 9, 2005, Mr. Richardson was charged with a third degree felony for Criminal Non-support in violation of Utah Code Ann. §76-7-201. R1-3. On or about March 7, 2007, Mr. Richardson pled guilty as charged pursuant to the terms of the parties’ negotiated plea agreement. R81-96 (**Addendum A**). In particular, the parties agreed that if Mr. Richardson made payments for child support and restitution during the period of time between arraignment and sentencing, the State would recommend that Mr. Richardson serve no jail time. R81:6.

Initially, Mr. Richardson was to be sentenced on May 11, 2007, at which time he was current in his child support and restitution payments pursuant to the

plea agreement. R99-100. However, through no fault of Mr. Richardson's, sentencing was continued to August 17, 2007 because the presentence investigation report was not completed. *Id.*

During sentencing on August 17, 2007, the State represented that Mr. Richardson had not complied with the terms of the plea agreement between May and August 2007, claiming he had failed to make child support and restitution payments as agreed, and thus asked the district court to impose jail time. R122:2-6 (**Addendum B**). Both Mr. Richardson and his counsel disputed the State's factual allegations that Mr. Richardson had breached the plea agreement. R122:6-11. However, the district court effectively found Mr. Richardson in breach of the plea agreement (R122:11-12) and sentenced him to 180 days in jail. R101-103.

Mr. Richardson timely filed his Notice of Appeal on September 12, 2008.

STATEMENT OF FACTS

The parties' negotiated plea agreement in this case provided if Mr. Richardson pled guilty as charged and made monthly child support and restitution payments pending sentencing, the prosecutor would recommend no additional jail time. R:81:6 (**Addendum A**). Mr. Richardson was initially to be sentenced on May 11, 2007, at which time he was apparently current in his child support and restitution payments pursuant to the plea agreement. R99-100; R211:2-6, 10-11 (**Addendum B**).

However, sentencing was continued to August 17, 2007, because the presentence investigation report was not completed. *Id.* The continuance caused

Mr. Richardson to lose a business client because the client did not want to continue a professional relationship with Mr. Richardson without knowing whether or not he was going to be incarcerated and thus unavailable to meet the client's business needs. R211:11. However, notwithstanding that financial setback that resulted from sentencing being continued through no fault of Mr. Richardson's, he continued working to build up his business and making monthly payments to the best of his ability pending the new sentencing date. *Id.*

At the time of sentencing on August 17, 2007, the status of the payments was disputed. The prosecutor represented that Mr. Richardson had made some payments but they were insufficient. R122:2-3 (**Addendum B**). She further stated that the accrued deficiency since the time of arraignment was about \$1,700 and requested that he be ordered to serve some time in jail contrary to the plea agreement. R122:3, 5.

Defense counsel explained to the court that Mr. Richardson had spent six months in jail and was released about three months prior to his arraignment. R122:6. Subsequent to his entry of plea, Mr. Richardson made payments every month up until sentencing totaling \$2,560. *Id.* at 6, 10. Defense counsel further explained that Mr. Richardson had simply been unable to make full payments but had paid what he could under the circumstances. *Id.*¹

¹ Defense counsel initially requested a continuance, explaining to the district court that Mr. Richardson had made diligent efforts to make the payments but had experienced some health problems and was working to stabilize his business, and further represented that Mr. Richardson would be completely current in his

Defense counsel further explained that Mr. Richardson had been diligent in his efforts and had done what he could practically be expected to do. He had been in constant contact both with the criminal non-support monitor from the Attorney General's office and with his attorney; and defense counsel represented that if the court would continue sentencing for a few more weeks Mr. Richardson would be able to bring his payments current. *Id.* at 6-7. Because of Mr. Richardson's recent and lengthy incarceration and the nature of his job as an independent contractor, he needed some additional time to get back on his feet financially and bring his payments current. *Id.* at 7-8.

Mr. Richardson explained to the district court his intent to pay lump sum payments every opportunity he had. *Id.* at 8. He told the court how he was working to make his business more financially successful, the potential opportunities he had to increase his income significantly, and how those circumstances would benefit his children. *Id.* at 9. Mr. Richardson explained that his current efforts to develop his business would have a bigger payoff in the long run and thereby be of greater benefit to his children than if he were to abandon those efforts and alternatively find one or two minimal paying jobs. *Id.* Further, Mr. Richardson had an opportunity to take two additional clients that would raise his income to almost \$9,000 per month. R122:9.

payments if the district court would continue sentencing a few weeks. R122:1-2 (**Addendum B**).

Mr. Richardson also explained that he had experienced some serious medical problems with his prostate during the previous month such that he was urinating blood. *Id.* His temporary financial difficulties were thus exacerbated by the fact that he had no health insurance; he was working to provide that for both himself and for his children. *Id.*

The district court rejected both Mr. Richardson's and his counsel's representations, accepted the State's unilateral finding of breach, and found that he had not complied with the plea agreement. *Id.* at 11. Accordingly, the district court sentenced Mr. Richardson to 180 days in jail with credit for 51 days served. *Id.* The court explained her belief that Mr. Richardson should serve the jail time because, "I don't believe you get it. ... You just don't get it." The court then had Mr. Richardson immediately taken into custody and declined his request to ask his attorney a question. *Id.* at 13.

Additional facts will be cited herein as warranted.

SUMMARY OF ARGUMENT

The due process clause contained in the Utah Constitution provides greater protections than its federal counterpart in several instances. In light of the fundamental liberty interests at stake, a court should not make a finding, implicit or express, that a defendant breached a plea agreement based solely on the State's unilateral finding of breach, as the court did in this case. The material facts relative to that issue were disputed and Mr. Richardson's full performance may have been excused based on the State's comparative negligence, Mr. Richardson's

substantial performance, and the doctrine of impossibility or impracticability. Further, even in a civil forum where the civil interests involved are not nearly as important as the fundamental liberty interests at stake in a criminal proceeding, Mr. Richardson would have been entitled to an evidentiary hearing on the question of breach.

If Mr. Richardson did not breach the plea agreement, he was deprived of its benefit such that the State did materially breach that agreement when it recommended that Mr. Richardson serve jail time contrary to the plea agreement. In that event, Mr. Richardson is entitled to have his plea withdrawn.

ARGUMENT

I. MR. RICHARDSON WAS DENIED HIS STATE AND FEDERAL RIGHTS TO DUE PROCESS OF LAW WHEN THE DISTRICT COURT FOUND HIM IN BREACH OF THE PLEA AGREEMENT BASED ON THE STATE'S UNILATERAL REPRESENTATIONS.

A. The State Due Process Clause Requires an Evidentiary Hearing Before a Finding of Breach Can Be Made.

Principles of contract law apply to the interpretation of a plea agreement. *State v. Patience*, 944 P.2d 381, 386-87 (Utah App. 1997). However, once a defendant has been induced to enter a guilty plea in reliance upon promises contained in a plea agreement, important constitutional rights, particularly rights to due process of law, are also implicated. *Mabry v. Johnson*, 467 U.S. 504, 508-9 (1984). Therefore, allowing the State to make a unilateral finding of breach and not affording a defendant the opportunity to present evidence in his defense,

particularly when the relevant facts are in dispute as in this case, is a violation of both the Utah and the federal due process clauses.

Particularly under the state due process provision, a defendant accused of being in breach of a plea agreement must be permitted to present evidence of compliance prior to his liberty being taken as a result of the alleged breach. Simply allowing the State to unilaterally find breach without presenting any evidence of the same or permitting the defendant to defend himself against the allegations of breach is a violation of state due process, especially when a deprivation of liberty is the consequence for the defendant's breach.

Article I, section 7 of the Utah Constitution provides, "No person shall be deprived of life, liberty or property without due process of law." The Utah Supreme Court has found greater protection in this state provision than its federal counterpart. *See, State v. Ramirez*, 817 P.2d 774 (Utah 1991) (explaining eyewitness identification testimony is subject to greater scrutiny under the state provision); *Foote v. Board of Pardons*, 808 P.2d 734 (Utah 1991) (inmate had right to state due process at Board of Pardons hearing, which right is not recognized under the federal constitution); *State v. Copeland*, 765 P.2d 1266, 1272 (Utah 1988) (finding statutory provisions regarding guilty and mentally ill arbitrary and capricious in violation of state due process).

Plea agreements are not mere civil contracts. They are agreements that are contractual in nature but that affect fundamental liberty interests in a profound way. In other words, the interest at stake is not merely money. It is the

defendant's freedom. Therefore, plea agreements "are binding on the parties and the court once the plea is entered and accepted[.]" (*State v. Kay*, 717 P.2d 1294, 1304 (Utah 1986)), but in a manner that implicates constitutional guarantees to due process of law. In light of the fundamental liberty interests at stake, mere allegations that a defendant breached the plea agreement such as those proffered here, are insufficient to justify the taking of a defendant's liberty.

Given the fact that at a hearing before the Board of Pardons where liberty is at stake, the state due process provision affords an incarcerated inmate greater due process protections than those afforded to him under the federal due process clause (*Foote v. Board of Pardons, supra*), it logically and justly follows that a defendant whose liberty will be taken as a result of his alleged breach of a plea agreement, should be afforded similar if not greater due process protections in determining whether a breach of the plea agreement in fact occurred. Simply allowing the State to make a unilateral finding of breach, as occurred in this case, is fundamentally unfair. Moreover, adopting such a one-sided approach in favor of the government is unacceptable and therefore violates the due process clause contained in the Utah Constitution.

Particularly in light of the thoughtful way the Utah due process clause has been distinguished from the federal provision and carefully shaped by our appellate courts to provide even greater protections as demonstrated by the precedent set forth herein, it is consistent with that rationale to conclude that due process under the Utah Constitution both affords and requires a defendant a fair

opportunity to be heard and to present evidence in his defense so he can rebut the State's allegations that he breached the plea agreement. This conclusion accords with basic principles of fundamental fairness. It simply is not fair or just to deprive a party of the right to defend him or herself against allegations, especially when the consequence of that deprivation is incarceration, as in this case.

Therefore, when the facts are disputed as they are here, at a minimum the defendant should be entitled to an evidentiary hearing on the question of breach. An evidentiary hearing that takes into account important constitutional protections as well as applicable contract principles would afford an allegedly breaching defendant requisite due process protections. The Tenth Circuit Court of Appeals adopted this logical and fundamentally fair approach several years ago:

We believe that one requisite safeguard of a defendant's rights is a judicial determination, based on adequate evidence, of a defendant's breach of a plea agreement. The question of a defendant's breach is not an issue to be finally determined unilaterally by the government. If the [record] reveal[s] a factual dispute on the issue of breach, the district court must hold a hearing to resolve the factual issues. If the [record] reveal[s] no disputed factual issues, no hearing is necessary and the court may determine the issue of breach as a matter of law. We also believe that constitutional principles of fairness also require that once the government acknowledges the existence of an agreement, the government has the burden of establishing a breach by the defendant if the agreement is to be considered unenforceable.

United States v. Calabrese, 645 F.2d 1379, 1390 (10th Cir. 1981) (citing *Santobello v. New York*, 404 U.S. 257, 262 (1971) (explaining because important due process rights are involved in the context of plea agreements, there must be

“safeguards to insure the defendant what is reasonably due under the circumstances”).

Although the Court did not deal directly with this issue in *Santobello*, the principles articulated therein support a finding that an evidentiary hearing on the question of breach is also required under the federal due process provision.

However, that Mr. Richardson is entitled to such a hearing is a given under the more protective state due process clause.

In this case, whether Mr. Richardson committed a material breach of the plea agreement is hotly disputed and not known or provable one way or the other from the sparse record. Both he and his counsel raised arguments implicitly supporting a finding of substantial performance, impossibility or impracticability of performance,² and comparative negligence on the part of the State³ for delaying completion of the presentence investigation report, which delay cost Mr.

Richardson a job opportunity with a value of \$1,600 per month, and thereby made it impossible to perform within the short period of time allotted. R 122:8, 10-11.

² Under contract law, impossibility or impracticability are doctrines that excuse performance. *Allen v. Prudential Property & Casualty Ins. Co.*, 839 P.2d 798, 815 (Utah 1992). “Under the contractual defense of impossibility, an obligation is deemed discharged if an unforeseen event occurs after formation of the contract and without fault of the obligated party, which event makes performance of the obligation impossible or highly impracticable.” *Western Properties v. Southern Utah Aviation*, 776 P.2d 656, 658 (Utah App. 1989).

³ “[W]here plaintiff’s negligent conduct was a contributing factor in *causing* the injury, comparative negligence becomes a defense for the defendant.” *Acculog, Inc. v. Peterson*, 692 P.2d 728, 730 (Utah 1984) (emphasis in original).

However, the record is insufficient to make any determination about Mr. Richardson's income, his ability to increase his income, his expenses, or his ability to meet his monthly \$800 obligation under the plea agreement. The record is also insufficient to make any determination regarding the State's comparative negligence. Rather than hear and consider such evidence prior to making any conclusions about breach, the district court simply adopted the State's unilateral finding that Mr. Richardson had failed to comply. As a direct consequence, Mr. Richardson was deprived of his liberty contrary to the express terms of the plea agreement, which deprivation seems counterproductive at best as, in addition to the loss of his freedom, the district court's willingness to simply adopt the State's unilateral finding of breach cost Mr. Richardson job opportunities and thereby set him even further back financially and thus deprived his children of his financial support. This liberty interest is too important and fundamental, particularly under the more protective provision in the Utah Constitution, to allow the State to make a unilateral determination of breach as they did here.

Accordingly, the district court deprived Mr. Richardson of his liberty without due process of law in violation of the Utah Constitution.

B. Even in a Civil Proceeding, Mr. Richardson Was Entitled to a Hearing on the Issue of Breach.

Had the plea agreement in this case been a mere civil contract, the law would still have afforded Mr. Richardson an evidentiary hearing on the question of breach. As this Court previously explained in another case, "What constitutes a

material breach is a question of fact.” *Coalville City v. Lundgren*, 930 P.2d 1206, 1209 (Utah App. 1997) (citing *Olympus Hills Shopping Ctr., Ltd. v. Smith’s Food & Drug Ctrs., Inc.*, 889 P.2d 445, 458 (Utah App. 1994), *cert. denied*, 899 P.2d 1231 (Utah 1995) (“Whether a party has materially breached a lease is generally a question of fact for the fact finder”)).

In a criminal case, the liberty interests at stake are much more important and fundamental than those implicated in a civil case where the remedy for material breach is damages or rescission of the contract, not the breaching party’s loss of freedom. It would be nonsensical to conclude that while Mr. Richardson would have been allowed to defend himself against the State’s allegations in a civil forum, he was not allowed to do so in a proceeding where the consequence for breach was the fundamental right to be free.

Therefore, Mr. Richardson should have been permitted the opportunity to defend himself against the State’s allegations of breach and, given the fact that these basic protections are provided even in a civil proceeding and in light of the case law cited herein, the district court’s failure to afford him the chance to defend himself was plain error.

II. IF AN EVIDENTIARY HEARING REVEALS THAT MR. RICHARDSON DID NOT MATERIALLY BREACH THE PLEA AGREEMENT, THE AGREEMENT SHOULD BE RESCINDED AND HIS PLEA WITHDRAWN.

Based upon the parties’ representations at the time of sentencing, Mr. Richardson may have substantially performed his obligations under the plea

agreement. R211:2-3, 6-11. Further, any lack of full performance may well be justified due to the State's comparative negligence and the doctrines of impossibility or impracticability. *Id.*

While contract law provides a “useful analytical framework in cases involving plea agreements ... [and] cannot be blindly incorporated into the criminal law in the area of plea bargaining[.]”⁴ certainly if the State's action or inaction or other unforeseen circumstances make it impracticable for a defendant to perform as agreed, contract doctrines excusing the defendant's performance should apply, especially given the more weighty liberty interests involved.

According to Mr. Richardson's statements made during the sentencing hearing, he was current in his payment obligations in May 2007 when sentencing was originally supposed to occur. R:211:10-11. The State seemed to agree, noting that post-arraignment arrearages did not begin to accrue until May 2007 when Mr. Richardson was originally scheduled to be sentenced. R211:2-3. The State's failure to have the presentence investigation report timely completed at that time cost him a job opportunity and thereby made it temporarily impossible for him to fully meet his payment obligation although he did continue to make monthly payments. *Id.*

Even though a district court is not bound to follow a prosecutor's recommendation, a defendant is still entitled to the benefit of his plea agreement such that the State must perform its obligations therein. *State v. Bero*, 645 P.2d

⁴ *State v. Stringham*, 17 P.3d at 1156 (citations and some punctuation omitted).

44, 46-7 (Utah 1982). In other words, if Mr. Richardson did not materially breach the plea agreement and the contract doctrines of substantial performance, comparative negligence, or impossibility or impracticability apply, he was entitled to the State's specific performance of its obligations under the plea agreement.

If Mr. Richardson is not in breach, the State's failure to specifically perform as agreed constitutes a material breach on the State's part that severely prejudiced Mr. Richardson and requires rescission of the entire agreement such that Mr. Richardson's plea should be withdrawn and he should be placed back in a pre-trial position as if his plea had never been entered. *Coalville City v. Lundgren*, 930 P.2d at 1210 (discussing the general right of rescission a party has when there has been a material breach); *see also*, *Santobello v. New York*, 404 U.S. 257 (1971) ("when a plea rests in any significant degree on a promise or agreement of the prosecutor so that it can be said to be part of the inducement or consideration, such promise must be fulfilled"); *State v. Bero*, 645 P.2d 44, 47 (Utah 1982) (explaining that when there has been a misunderstanding between the parties about the terms of the plea agreement, the error "can be most easily corrected by placing the parties in their original positions"); *accord*, *State v. Bickley*, 60 P.3d 582, 584 (Utah App. 2002).

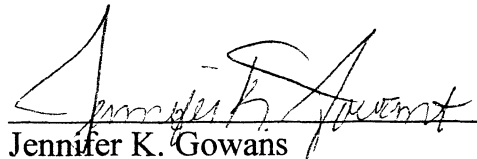
Accordingly, Mr. Richardson should be permitted to present evidence on the question of breach. If it is then determined that he did not materially breach the plea agreement and/or that contract doctrines excusing his performance in whole or in part apply, his guilty plea in this case should be withdrawn.

CONCLUSION

Mr. Richardson respectfully requests this Court to find that the due process clause contained in the Utah Constitution in particular, and also the due process clause set forth in the federal constitution, require that Mr. Richardson be given the opportunity to present evidence in his defense at an evidentiary hearing to determine whether or not he breached the plea agreement in this matter. At such hearing, the district court should make findings of fact and conclusions of law regarding whether there has been a material breach by either party and further analyze the facts within the legal doctrines of substantial performance, the State's comparative negligence, and impossibility or impracticability.

Accordingly, Mr. Richardson respectfully requests that this matter be remanded to the district court for an evidentiary hearing on the question of breach.

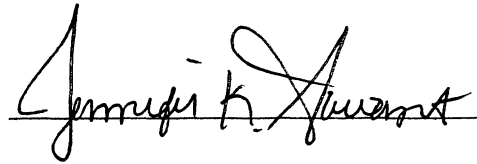
Respectfully submitted this 3rd day of March, 2008.


Jennifer K. Gowans
Attorney for Mr. Richardson

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of March, 2008, I caused to be hand-delivered two (2) true and correct copies of the foregoing Brief of Appellant to the following:

Utah Attorney General's Office
Appeals Division
160 East 300 South
6th Floor
PO Box 140854
Salt Lake City, Utah 84114-0854

A handwritten signature in black ink, appearing to read "Jennifer K. Stewart", is written over a horizontal line.

Addendum A

ANN ROZYCKI #7609

Assistant Attorney General

MARK SHURTLEFF #4666

ATTORNEY GENERAL

Attorneys for the Plaintiff

160 East 300 South

P.O. Box 140814

Salt Lake City, Utah 84114-0814

Telephone: (801) 366-0199

**IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT**

STATE OF UTAH,

Plaintiff,

v.

DARIN RAY RICHARDSON,

Defendant.

**STATEMENT OF DEFENDANT
IN ADVANCE OF GUILTY PLEA
AND
CERTIFICATE OF COUNSEL**

Criminal No. 051906048FS

Judge: JUDITH S.H. ATHERTON

I, DARIN RAY RICHARDSON, hereby acknowledge and certify that I have been advised of
and that I understand the following facts and rights:

Notification of Charges

I am pleading guilty to the following crimes:

Crime & Statutory Provision	Degree	Punishment Min/Max and/or Minimum Mandatory
A. <u>Criminal Non-Support, Utah Code Annotated §76-7-201</u>	<u>3rd Degree Felony</u>	<u>0-5 years Utah State Prison, \$5,000 fine.</u>

I have received a copy of the Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime to which I am pleading guilty.

I am pleading to Count I of the Information.

The **elements** of the crime to which I am pleading guilty are:

- a. That during the time period charged, the Defendant had a child who was then under 18 years of age;
- b. That the Defendant knowingly failed to provide for the support of the child;
- c. That during this time period, the child was in needy circumstances or would have been in needy circumstances had it not been for support provided by others, and not on Defendant's behalf, and;
- d. That the Defendant committed the offense of criminal non-support in each of 18 individual months in any 24 month period that extended beyond May 3, 1999, and/or had a child support arrearage in excess of \$10,000.00, and/or had been previously convicted of Criminal Non-support.

I understand that by pleading guilty I will be admitting that I committed the crime listed above. I stipulate and agree that the following facts describe my conduct and the conduct of

other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty pleas and prove the elements of the offense to which I am pleading guilty:

During the time period from December 1, 2002, through August 31, 2005, I was the natural parent of Dillon Ray Richardson, born April 8, 1998. I knew that I had the obligation to provide support for my child and I failed to provide support although I had the means or the ability to obtain the means to do so. My child was in needy circumstances or would have been in needy circumstances but for the support provide by others and not on my behalf. I failed to provide support in at least 18 months in a 24 month period, and my total child support arrears exceed \$10,000.00.

Waiver of Constitutional Rights

I am entering these pleas voluntarily. I understand that I have the following rights under the constitutions of Utah and the United States. I also understand that if I plead guilty I will give up all the following rights:

Jury Trial. I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

Confrontation and cross-examination of witnesses. I know that if I were to have a jury trial, a) I would have the right to see and observe the witnesses who testified against me and b) my attorney, or myself if I waived my right to an attorney, would have the right to confront and cross-examine in open court all of the witnesses who testified against me.

Right to compel witnesses. I know that if I were to have a trial, I could compel the attendance of defense and/or other witnesses of my choosing. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

Right to testify and privilege against self-incrimination. I know that if I were to have a jury trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know that if I chose not to testify, the jury would be instructed to not hold my refusal to testify against me.

Presumption of innocence and burden of proof. I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crime. If I choose to fight the charges against me, I need only plead “not guilty,” and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the offense charged beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed each element of the crime stated above.

Appeal. I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that if I plead guilty, my right to appeal is limited and may be waived entirely depending on the nature of the appeal.

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

Right to Counsel

I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for all or a portion of the appointed lawyer’s service to me.

I have not waived my right to counsel. If I have waived my right to counsel, I have done so knowingly and voluntarily. I certify that I have read this statement or had it read to me and that I understand the nature and elements of the charges and crimes to which I am pleading guilty. I also understand my rights in this case and other cases and the consequences of my guilty plea.

If I have not waived my right to counsel, my attorney is Gretchen P. Havner, Salt Lake Legal Defender Association. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty plea.

Consequences of Entering a Guilty Plea

Potential penalties. I know the maximum and minimum sentence that may be imposed for each crime to which I am pleading guilty. I know that by pleading guilty to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that

crime. I know my sentence may include a term of incarceration in jail or prison, a fine, or both.

I know that in addition to any fine, an eighty-five percent (85%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed or conduct for which I have agreed to make restitution as part of a plea agreement.

Consecutive/concurrent prison terms. I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or to which I have plead guilty, my guilty plea now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

Plea Bargain

My plea of guilty is the result of prior plea discussions conducted between my attorney, on my behalf, or myself if I am not represented by counsel, and the prosecutor from the Utah Attorney General's Office. The terms of the plea negotiation are as follows:

A. I will enter a guilty plea to Count I of the Information.

B. I will pay victim restitution in the amount of all child support arrears (principal and interest) that accrue through the date of sentencing. As of today's date, my child support arrears total \$21,854.68 (principal and interest). The restitution is to be distributed as follows:

i) The State of Utah on behalf of Melissa A. Irvin (principal and interest)	\$11,320.68
ii) The State of Utah (reimbursement of public assistance principal only)	\$10,534.00

I understand that the restitution judgment shall accrue interest as set forth in Utah Code Ann. § 77-38a-401(4) (2001). At my request, a copy of the Debt Computation used to calculate the restitution amount agreed to is attached hereto and incorporated by reference.

C. Further, the prosecutor has agreed that if I plead guilty pursuant to this plea agreement and make my child support payments pending sentencing, the prosecutor will recommend at the time of sentencing that I be placed on Probation to Adult Probation and Parole, and a criminal non-support monitor from the Attorney General's Office with the general terms of probation and these additional conditions:

a. No additional jail time if I make my on-going child support payments beginning with February 2007 and my restitution payments as outlined.

b. I shall pay ongoing child support as required by any valid Order now existing or that is discovered or established during the term of my probation, presently in the amount of \$520.00 per month. In the event my ongoing support is reduced during the probation period, I will continue to pay at the same amount with the difference being applied as additional restitution.

c. I shall make restitution payments of at least \$280.00 per month.

d. I shall make all payments through the Office of Recovery Services at P.O. Box 45011, Salt Lake City, Utah 84145-0011 by wage withhold put in place by the Office. Any check or money order that I send in will contain my ORS Case Number(s) to assist in proper crediting. MY FIRST MONTHLY RESTITUTION PAYMENT WILL BE DUE MARCH 30, 2007.

f. I understand that the Office of Recovery Services may intercept and apply any income tax refunds to child support arrearage incurred prior to the signing of this Stipulation. I understand that intercepted taxes may apply to my child support arrears, but the receipt of intercepted taxes by ORS does not entitle me to miss a monthly restitution payment.

g. In the event that a wage withhold is in place and the amount withheld is insufficient to cover the my monthly payment, it will be the my responsibility to make up any shortages to satisfy the requirements of the order.

h. I am to obtain and maintain full-time (at least 40 hours per week), verifiable employment throughout the period of my probation. Monitoring will be made by Adult Probation and Parole and by Anna M. Gamangasso, Criminal Non-support Monitor, or successor, of the Attorney General's Office, for the State of Utah. In the event that I am unable to maintain full-time employment, I will provide reports of efforts made to secure employment to the monitors.

i. I will advise Adult Probation and Parole and Anna M. Gamangasso, Criminal Non-support Monitor, or successor, of the Attorney General's Office, in writing of any change of address or employment within 10 days of such change.

Trial Judge Not Bound

I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the Judge. I also know that any opinions they express to me as to what they believe the Judge may do are not binding on the Judge.

Defendant's Certification of Voluntariness

I am entering this plea of my own free will and choice. No force, threats, of unlawful influence of any kind have been made to get me to plead guilty. No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by an attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

I am satisfied with the advice and assistance of my attorney.

I am _____ years of age. I have attended school through the _____ grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.

I understand that any request to withdraw my plea of guilty must be done by motion and prior to the sentence being announced. I further understand that my plea may only be withdrawn by leave of the Court and based upon a showing that it was not knowingly and voluntarily made.

Dated this _____ day of _____, 2007.

DARIN RAY RICHARDSON
Defendant

Certificate of Defense Attorney

I certify that I am the attorney for DARIN RAY RICHARDSON, the Defendant above, and that I know he has read the statement or that I have read it to him; I have discussed it with him and believe that he fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime and the factual synopsis of the Defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the Defendant in the foregoing affidavit, are accurate and true.

GRETCHEN P. HAVNER
Attorney for Defendant
Bar No. _____

Certificate of Prosecuting Attorney

I certify that I am the attorney for the State of Utah in the case against DARIN RAY RICHARDSON, Defendant. I have reviewed this Statement of Defendant and find that the factual basis of the Defendant's criminal conduct which constitutes the offense is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered Defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of Defendant for the offense for which the plea is entered and that the acceptance of the plea would serve the public interest.

ANN ROZYCKI

Prosecutor

Bar No. 7609

ORDER

Based on the facts set forth in the foregoing Statement and the certification of the Defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds that the Defendant's guilty plea is freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the Defendant's guilty plea to the crime set forth in the Statement be accepted and entered.

Dated this _____ day of _____, 2006.

BY THE COURT:

JUDITH S. H. ATHERTON
DISTRICT COURT JUDGE

Addendum B

IN THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE DIVISION, SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	Case No. 051906048
	:	
Plaintiff,	:	
	:	Appellate Case No. 20070747-CA
v	:	
	:	
DARIN RAY RICHARDSON,	:	
	:	
Defendant.	:	

SENTENCING AUGUST 17, 2007

BEFORE

THE HONORABLE JUDITH S. ATHERTON

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SALT LAKE CITY, UTAH; AUGUST 17, 2007

HONORABLE JUDITH S. ATHERTON, JUDGE PRESIDING

For the Plaintiff: ANN C. ROZYCKI

For the Defendant: GRETCHEN P. HAVNER

P R O C E E D I N G S

MS. HAVNER: Your Honor, my next matter is that of
Darin Richardson.

THE COURT: And for the state?

MS. ROZYCKI: Ann Rozycki for the State, Your
Honor.

THE COURT: Okay.

MS. HAVNER: Yes, Your Honor, this is Mr.
Richardson.

THE COURT: Mr. Richardson, you're before me today
for sentencing. You entered a plea of guilty to the charge
of criminal non-support. I've reviewed the pre-sentence
report.

Ms. Havner, have you and Mr. Richardson reviewed
that as well?

MS. HAVNER: We have.

THE COURT: Ms. Rozycki?

MS. ROZYCKI: Yes, Your Honor.

THE COURT: Okay.

MS. HAVNER: Well, Your Honor, we are requesting
that you consider continuing this sentencing until October.

1 Mr. Richardson indicates to me that he has an outstanding -
2 he's an independent contractor that he has an outstanding
3 bill that should be paid on August 28 that he should be able
4 to pay \$2,400 to the court by September 15, which would bring
5 him in full compliance. He has been living in Texas with the
6 permission of the court. He has had some health issues, but
7 is working on getting his business more stabilized, and
8 assures me that he will be able to be completely current by
9 the next court date.

10 THE COURT: Did we set - I set a schedule he was to
11 pay \$320 ongoing - 520 ongoing, \$280 arrearages to the Office
12 of Recovery Services?

13 MS. ROZYCKI: That's correct, Your Honor, and he
14 hasn't. Your Honor, when we were here on sentencing we were
15 scheduled for sentencing in May on the 11th, and at that
16 point in time the court had not received the pre-sentence
17 report.

18 THE COURT: Right.

19 MS. ROZYCKI: We actually gave him this far out
20 because he came to the court with a card saying he had full-
21 time employment and a plan to pay and he had just caught up
22 when he was supposed to have paid in March and April under
23 the plea bargain. The employment did not work out. There
24 was never a [inaudible] in place. He indicated after
25 Recovery Services contacted him and attempted to reach that

1 employer that he was a 1099 independent contractor. So
2 basically he was supposed to make the May payments still
3 which he didn't. June he paid \$200 on his own after Recovery
4 Services called him. In July they called him to remind him
5 of when he was supposed to pay and he paid \$320. Nothing's
6 come in for August yet. He's had plenty of time.

7 THE COURT: So what are the arrearages now just
8 since May?

9 MS. ROZYCKI: Just since May? It would be about
10 \$1,700 with August and then August [inaudible] as well. The
11 victim is present again as she was last time, Your Honor, to
12 address the Court and this is not the first time and this
13 case was filed in 2005. At that time in September of 2005 he
14 actually called into the office to find out about the case
15 being filed, and no payments came in at all until at court
16 here in December of 2006. And this is not the first time
17 we've heard there is a job, there is something going on, and
18 I can - just give me a little more time and I can do
19 something. I think he's had that opportunity and should be
20 sentenced today.

21 THE COURT: Does the victim wish to speak now?

22 MS. ROZYCKI: She does wish to speak to the court,
23 Your Honor.

24 THE COURT: All right. Ms. Haver, if you and Mr.
25 Richardson could go over to the table.

1 MS. HAVNER: We will, Your Honor.

2 MS. IRVIN: I'm Melissa Irvin. I'm Joel
3 Richardson's mother and for the past four years we have been
4 doing without a lot of things. I've gone to the church
5 several times in the last three years to get help and food
6 and my rent paid. I have worked very hard the last three
7 years to try to sustain a house for him and give him scouting
8 and give him all the things that he needs as a young man.
9 And I don't want excuses anymore and we have both - him and I
10 have both suffered. We love each other, me and Dillon, very
11 much, have a great relationship, strong bond, but there's a
12 lot of things we could have used, a lot of help we could have
13 used, a lot of extra clothes or just activities he could have
14 used to strengthen his life better as a young man growing up
15 to be a man. And I just think that the Court should know
16 that this has all been a nightmare for both of us, me and my
17 son, and I don't think Mr. Richardson intends on helping my
18 son or myself. And, well, I know visitation is a separate
19 issue but he hasn't tried to do that either. That's all.

20 THE COURT: All right. Thank you.

21 What is the State's recommendation, Ms. Rozycki?

22 MS. ROZYCKI: Your Honor, when we were here last
23 time pursuant to the plea bargain had he made payments we
24 were going to recommend to the court [inaudible]. I know the
25 Court was quite firm with him at that point in time that we

1 had concerns because of the length of his criminal history
2 and whether or not he would comply. And part of the reason
3 that the State recommended giving him this 90 days was to see
4 what he would do. So our position is that if the Court is
5 still inclined to follow that AP&P recommendation of
6 probation that it can't be just court probation. I think
7 he's shown that he could not be supervised by just a monitor
8 in our office alone. And I believe that is AP&P's
9 recommendation and it's addressed in the pre-sentence report.
10 And I think that the 90 days that they're recommending is the
11 minimal jail time that should be imposed at this point. He
12 actually has served 51 days on this case and through all of
13 this he's still not getting that he needs to step up to the
14 plate and comply with a full-time verifiable employment and
15 make his child support payments. We ask that he does serve
16 that time and that when he is released from incarceration
17 that he is required to maintain - obtain and maintain full-
18 time employment and that he pays ongoing child support and
19 that amount towards arrears.

20 And part of the concern, Your Honor, for the
21 employment is and I think this comes out in AP&P's report is
22 that it's - he's been very deceptive about it. No one is
23 really sure what he's doing or where. AP&P addresses it in
24 their report on page 3 that he says he has no verifiable
25 income and he's had, supposedly he's owned security companies

1 and online escort services. And then later in the report
2 they find out that on page 7 that he says he has an income of
3 \$2,500 a month, but they're not sure how because he doesn't
4 have employment. It's never been - he's never been
5 forthright and up front and in place where that money could
6 come in regularly.

7 THE COURT: Ms. Havner.

8 MS. HAVNER: Well, Your Honor, I disagree with Ms.
9 Rozycki's characterization of what Mr. Richardson has done.
10 He did six months in jail. He got out in December. Since
11 then he has made substantial payments. He made a payment in
12 December, March, April, May, June and July which are the most
13 consistent payments that he's made throughout this entire
14 case. He has made a payment every single month since we
15 entered the plea agreement. He hasn't been able to make the
16 full amount of payments that he agreed, but he has made a
17 payment every single month that he - since he entered his
18 plea. And I think that does show substantial commitment to
19 this case, substantial commitment that he is going to start
20 paying on this case.

21 I disagree with the characterization that he cannot
22 be supervised. He has been in contact with their agency.
23 They indicated that they called him and reminded him that he
24 needed to make payments and that he did so quickly after
25 that. Obviously they know where he is. Obviously they can

1 get in contact with him. He's come to every single court
2 date since getting out of jail. He's always in contact with
3 me both via email and via phone. I've always known where to
4 get in contact with him and have had regular contact with Mr.
5 Richardson.

6 So I believe that what the victim's saying is
7 accurate that for a long period of time that Darin did not
8 pay his child support and that they need the money and I
9 think he's showing now that he actually is trying and I don't
10 see the benefit to the victim to putting Darin back into jail
11 for another 90 days so that when he gets out he has to start
12 all the way over again.

13 Darin does not have a full-time verifiable job
14 because he is an independent contractor through various
15 groups where he runs their website. And he can tell you the
16 names of them and how he's been helping them out. But he has
17 been paying every single month and I believe that he will
18 continue to do so. Because of the nature of his business he
19 gets paid oftentimes in lump sums which has made it difficult
20 for him to make these payments every single month, but he
21 assures me that he is going to be paid another lump sum at
22 the end of August that he will be able to pay \$2,400 by
23 September 15 which would bring him more than in compliance
24 with what this court has ordered and that's the reason that
25 we're asking for this continuance through October. We're not

1 asking you to sentence him today without him completing what
2 he says he will do. We're asking you to give him some
3 additional time to show to you that he is serious about doing
4 this, that he is making a commitment this time that he has
5 not in the past. I think that Mr. Richardson has had a
6 change of heart and that he realizes how important this is.
7 I've worked with him extensively on this case and I think he
8 understands what he needs to do, and I believe sincerely,
9 Your Honor, that he is trying and that he will continue to
10 try. That's the reason that he's here today. That's the
11 reason that he's come to all the court dates in the past.

12 THE COURT: Thank you.

13 Mr. Richardson, anything you wish to say?

14 MR. RICHARDSON: Yes, Your Honor. I have quite a
15 bit to say. The last time I was before you a couple of your
16 concerns were that I would not be able to pay the full
17 amount, the \$21,000 over the 36 month probation. To me that
18 \$800 was the minimum payment that I required to pay. I fully
19 intended to pay lump sums every opportunity I had.

20 Now the job that initially I took when I was last
21 before you was [inaudible] cycle in Beaumont, Texas. I
22 maintain a website - I specialize in search engine
23 optimization. I have done it number one in Google ranking.
24 They pay me \$1,600 a month or \$400 a week. That one client
25 took about 10 hours of work per week. I have the opportunity

1 to take on two other clients with the potential could bring
2 in \$2,200 a week doing what I do.

3 I recently got new equipment, Microsoft
4 certification with respect to my own education, nobody has
5 even mentioned my daughter in Texas. I have a two-year old
6 daughter. She just turned two July 25th. Her mom has not
7 been working. She's going to dental school and is about to
8 graduate and start working. If I'm in Utah and believe me,
9 Your Honor, I'm very respectful with your order and I've seen
10 other people mess up and I'm not about to do that. I have
11 planned every option. My former roommate in Salt Lake on
12 Apollo Drive has offered me a room here if necessary. My
13 heart is in Texas with Mary and my daughter. My work is
14 there.

15 One of your other concerns was how would you get me
16 back here, but you don't need to get me back here. I'm back
17 here for my son and I on my own have thought of ways to make
18 things better with the state. I mean, I've got a bank
19 account at the University Credit Union set up and I want to
20 set it up so that they would do direct deposit instead of me
21 having to send in payments of \$400 every other Friday. I had
22 a medical problem in late July. I was urinating blood, had
23 some prostate problems and I don't have medical insurance.
24 So when I looked into medical insurance it was \$305 for me or
25 \$567 for me, Dillon and Riley. So that's another area that

1 I'm focusing on which is over and above the \$800.

2 In April when I was required to come up with \$2,780
3 on a short period of time, I was able to do that. And I
4 literally lived on \$20 a week t.v. dinners and worked hard in
5 this city doing labor to come up - to get in a position where
6 I could get a new laptop and do what I do. I mean, I could
7 work two \$10 an hour jobs and 10 years from now when Dillon
8 is 18, you know, the child support will be paid, but I won't
9 have any college funds set up for him, I won't have any real
10 help for him. I'm looking at making real money. I don't
11 want to just survive and pay my child support and see
12 my kids every other weekend. I want to have a future. And
13 that's why I'm back and forth. I mean, travel costs, trying-

14 MS. HAVNER: Your Honor, I think it's also
15 important to point out that since the time that he entered
16 his plea in March of this year he's paid \$2,560 which is a
17 substantial amount of money in this case. And like I said,
18 he's made a payment every single month. I think this shows
19 that he is making an effort that maybe he has not in the
20 past.

21 MR. RICHARDSON: I also would like to say that
22 Melissa has contacted me when I [inaudible] referring to May.
23 I mean, I was supposed to come back that afternoon and we
24 were supposed to address all these issues and I was supposed
25 to be told who at the AG's office was going to monitor my

1 case and who I report to, and you know, the agreement I
2 signed was that I would start paying \$800 after sentencing
3 and then Gretchen called me on the lunch hour and said, well,
4 you know, we've continued it until August. I mean it kind of
5 left me up in the air. It kind of left me one of my clients,
6 a wedding supply store in Houston, did not want to enter into
7 an agreement with me to handle their website because they
8 were not sure that I was going to be able to be there to
9 handle ongoing maintenance and such, so I missed out on that
10 opportunity. But, Your Honor, if you, I mean, if you
11 sentence me today and make a, like part of the sentence that
12 I have to do certain thing within a 30 day period or this
13 will be the consequences, I won't let you down. I guarantee
14 I won't let my son down. I will have that money.

15 THE COURT: Actually, Mr. Richardson, I already did
16 that.

17 MR. RICHARDSON: What's that?

18 THE COURT: I already did that and you didn't
19 comply. I'm going to sentence you as follows. I order you
20 to serve in indeterminate term at the Utah State Prison of
21 zero to five years. I'm suspending all but 180 days of that
22 with credit for 51 days served. I am taking you into custody
23 to serve the balance. Place you on 36 months probation
24 through Adult Probation & Parole. You're to be on good
25 behavior. That means you're not to come before this court or

1 any court in anything other than a minor traffic offense,
2 comply with all conditions placed upon you by AP&P, including
3 but not limited to having no contact whatsoever with the
4 victim. Fine of a surcharge of \$5,000, attorney's fees of
5 \$250. I will suspend the fine upon successful completion of
6 probation. Restitution is as follows: as of March 7, 2007
7 subject to -

8 MS. ROZYCKI: I have one update, Your Honor,
9 through August 16.

10 THE COURT: Okay. What is it?

11 MS. ROZYCKI: It is \$22,593.01.

12 THE COURT: Restitution as of today is \$22,593.01.
13 Upon your release from custody you are to pay the following:
14 \$520 per month ongoing, \$280 a month arrearage. That's to be
15 paid through the Office of Recovery Services. This is not
16 something we do all the time, but I know that AP&P and the
17 state can work through probation issues.

18 MS. ROZYCKI: We can, Your Honor, as long as you
19 allow our monitor to work with AP&P.

20 THE COURT: That is my order.

21 MS. HAVNER: I have a couple things, Your Honor.
22 First of all, I'm asking and maybe you said this, but I want
23 the money to go through ORS. I've had problems in the past
24 where AP&P -

25 MS. ROZYCKI: It is.

1 MS. HAVNER: Okay. Also, I'm requesting that you
2 consider giving Mr. Richardson additional credit towards the
3 time that he did. The reason that the credit is 51 days is
4 that we came before the court and requested that he be
5 released on this matter so that he would be eligible for
6 ankle monitor. He was not. He continued to serve in jail.

7 THE COURT: He was extradited -

8 MS. ROZYCKI: I think that time was on his other
9 offense [inaudible].

10 MS. HAVNER: It was, but he was held on this case
11 as well during that time period.

12 THE COURT: I'm not giving him credit for anything
13 but 51 days. I want him to serve jail time because, Mr.
14 Richardson, I don't believe you get it. Serious. You just
15 don't get it.

16 MR. RICHARDSON: Your Honor, I do get it. I have
17 another child that I've been trying to take care of. I have
18 another - I want to ask you, may I ask my attorney?

19 THE COURT: No, I'm just going to have you taken
20 into custody. I mean, you've made choices, I've given you
21 the benefit of trying to make things work and you haven't
22 (inaudible).

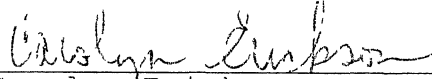
23 (Whereupon the hearing was concluded)
24
25

-C-

CERTIFICATE

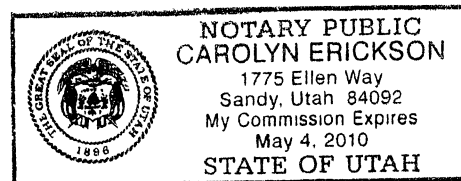
I HEREBY CERTIFY that the foregoing transcript in the before mentioned proceedings held before Judge Judith Atherton was transcribed by me from a Record Player recording and is a full, true and correct transcription of the requested proceedings as set forth in the preceding pages to the best of my ability.

Signed this 10th day of October, 2007 in Sandy, Utah.



Carolyn Erickson
Certified Shorthand Reporter
Certified Court Transcriber

My Commission expires May 4, 2010



<div>\$</div> <div>\$1,600^[1] 8:24</div> <div>\$1,700^[1] 3:10</div> <div>~10^[1] 10:7</div> <div>1,200^[1] 9:2</div> <div>\$2,400^[2] 2:4 7:22</div> <div>\$2,500^[1] 6:3</div> <div>\$2,560^[1] 10:16</div> <div>\$2,780^[1] 10:2</div> <div>\$20^[1] 10:4</div> <div>\$200^[1] 3:3</div> <div>\$21,000^[1] 8:17</div> <div>\$22,593.01^[2] 12:11,12</div> <div>\$250^[1] 12:5</div> <div>\$280^[2] 2:11 12:14</div> <div>\$305^[1] 9:24</div> <div>\$320^[2] 2:11 3:5</div> <div>\$400^[2] 8:24 9:21</div> <div>\$5,000^[1] 12:4</div> <div>\$520^[1] 12:14</div> <div>\$567^[1] 9:25</div> <div>\$800^[3] 8:18 10:1 11:2</div> <div>1</div> <div>10^[2] 8:25 10:7</div> <div>1099^[1] 3:1</div> <div>11th^[1] 2:15</div> <div>15^[2] 2:4 7:23</div> <div>16^[1] 12:9</div> <div>17^[1] 1:1</div> <div>18^[1] 10:8</div> <div>180^[1] 11:21</div> <div>2</div> <div>05^[2] 3:13,13</div> <div>2006^[1] 3:16</div> <div>2007^[2] 1:1 12:6</div> <div>25th^[1] 9:6</div> <div>28^[1] 2:3</div> <div>3</div> <div>3^[1] 5:24</div> <div>30^[1] 11:12</div> <div>36^[2] 8:17 11:23</div> <div>5</div> <div>51^[4] 5:12 11:22 13:3,13</div> <div>520^[1] 2:11</div> <div>7</div> <div>7^[2] 6:2 12:6</div> <div>9</div> <div>90^[3] 5:3,10 7:11</div> <div>A</div> <div>able^[7] 2:3,8 6:15 7:22 8:16 10:3 11:8</div> <div>above^[1] 10:1</div> <div>account^[1] 9:19</div> <div>accurate^[1] 7:7</div> <div>activities^[1] 4:13</div> <div>additional^[2] 8:3 13:2</div> <div>address^[2] 3:12 10:24</div> <div>addressed^[1] 5:9</div> <div>addresses^[1] 5:23</div>	<div>adult^[1] 11:24</div> <div>afternoon^[1] 10:23</div> <div>ag's^[1] 10:25</div> <div>agency^[1] 6:22</div> <div>agreed^[1] 6:16</div> <div>agreement^[3] 6:15 11:1,7</div> <div>air^[1] 11:5</div> <div>allow^[1] 12:19</div> <div>alone^[1] 5:8</div> <div>already^[2] 11:15,18</div> <div>amount^[4] 5:19 6:16 8:17 10:17</div> <div>ankle^[1] 13:6</div> <div>ann^[2] 1:3,9</div> <div>ap&p^[6] 5:5,23 12:2,16,19,24</div> <div>ap&p's^[2] 5:8,21</div> <div>apollo^[1] 9:12</div> <div>april^[3] 2:22 6:12 10:2</div> <div>area^[1] 9:25</div> <div>arrearage^[1] 12:14</div> <div>arrearages^[2] 2:11 3:7</div> <div>arrears^[1] 5:19</div> <div>assures^[2] 2:8 7:21</div> <div>atherton^[1] 1:2</div> <div>attempted^[1] 2:25</div> <div>attorney^[1] 13:18</div> <div>attorney's^[1] 12:4</div> <div>august^[8] 1:1 2:3 3:6,10,10 7:22 11:4 12:9</div> <div>B</div> <div>balance^[1] 11:23</div> <div>bank^[1] 9:18</div> <div>bargain^[2] 2:23 4:23</div> <div>basically^[1] 3:2</div> <div>beaumont^[1] 8:21</div> <div>behavior^[1] 11:25</div> <div>believe^[6] 5:8 7:6,17 8:8 9:8 13:14</div> <div>benefit^[2] 7:10 13:21</div> <div>better^[2] 4:14 9:18</div> <div>bill^[1] 2:3</div> <div>bit^[1] 8:15</div> <div>blood^[1] 9:22</div> <div>bond^[1] 4:11</div> <div>bring^[3] 2:4 7:23 9:1</div> <div>business^[2] 2:7 7:18</div> <div>C</div> <div>called^[5] 3:4,4,14 6:23 11:3</div> <div>came^[3] 2:20 3:15 13:4</div> <div>cannot^[1] 6:21</div> <div>card^[1] 2:20</div> <div>care^[1] 13:17</div> <div>case^[10] 3:13,14 5:12 6:14,19,20 8:7 10:17 11:1 13:10</div> <div>caught^[1] 2:21</div> <div>certain^[1] 11:12</div> <div>certification^[1] 9:4</div> <div>change^[1] 8:6</div> <div>characterization^[2] 6:9,21</div> <div>charge^[1] 1:15</div> <div>child^[6] 5:15,18 7:8 10:8,11 13:17</div> <div>choices^[1] 13:20</div> <div>church^[1] 4:4</div> <div>city^[2] 1:1 10:5</div>	<div>client^[1] 8:24</div> <div>clients^[2] 9:1 11:5</div> <div>clothes^[1] 4:13</div> <div>college^[1] 10:9</div> <div>comes^[1] 5:21</div> <div>commitment^[3] 6:18,19 8:4</div> <div>companies^[1] 5:25</div> <div>completely^[1] 2:8</div> <div>completing^[1] 8:1</div> <div>completion^[1] 12:5</div> <div>compliance^[2] 2:5 7:23</div> <div>comply^[4] 5:2,14 11:19 12:2</div> <div>concern^[1] 5:20</div> <div>concerns^[3] 5:1 8:16 9:15</div> <div>concluded^[1] 13:23</div> <div>conditions^[1] 12:2</div> <div>consequences^[1] 11:13</div> <div>consider^[2] 1:25 13:2</div> <div>consistent^[1] 6:13</div> <div>contact^[6] 6:22 7:1,2,4,4 12:3</div> <div>contacted^[2] 2:25 10:22</div> <div>continuance^[1] 7:25</div> <div>continue^[2] 7:18 8:9</div> <div>continued^[2] 11:4 13:6</div> <div>continuing^[1] 1:25</div> <div>contractor^[3] 2:2 3:1 7:14</div> <div>costs^[1] 10:13</div> <div>couple^[2] 8:15 12:21</div> <div>credit^[5] 9:19 11:22 13:2,3,12</div> <div>criminal^[2] 1:16 5:1</div> <div>current^[1] 2:8</div> <div>custody^[3] 11:22 12:13 13:20</div> <div>cycle^[1] 8:21</div> <div>D</div> <div>darin^[4] 1:7 7:7,10,13</div> <div>date^[2] 2:9 7:2</div> <div>dates^[1] 8:11</div> <div>daughter^[3] 9:5,6,13</div> <div>days^[8] 5:3,10,12 7:11 11:21,22 13:3,13</div> <div>december^[3] 3:16 6:10,12</div> <div>deceptive^[1] 5:22</div> <div>defendant^[1] 1:4</div> <div>dental^[1] 9:7</div> <div>deposit^[1] 9:20</div> <div>difficult^[1] 7:19</div> <div>dillon^[3] 4:10 9:25 10:7</div> <div>dinners^[1] 10:4</div> <div>direct^[1] 9:20</div> <div>disagree^[2] 6:8,21</div> <div>down^[2] 11:13,14</div> <div>drive^[1] 9:12</div> <div>during^[1] 13:11</div> <div>E</div> <div>each^[1] 4:10</div> <div>education^[1] 9:4</div> <div>effort^[1] 10:19</div> <div>either^[1] 4:19</div> <div>eligible^[1] 13:5</div> <div>email^[1] 7:3</div> <div>employer^[1] 3:1</div> <div>employment^[6] 2:21,23 5:14,18,21 6:4</div>	<div>end^[1] 7:22</div> <div>engine^[1] 8:22</div> <div>enter^[1] 11:6</div> <div>entered^[4] 1:15 6:15,17 10:15</div> <div>entire^[1] 6:13</div> <div>equipment^[1] 9:3</div> <div>escort^[1] 6:1</div> <div>even^[1] 9:5</div> <div>excuses^[1] 4:9</div> <div>extensively^[1] 8:7</div> <div>extra^[1] 4:13</div> <div>extradited^[1] 13:7</div> <div>F</div> <div>far^[1] 2:19</div> <div>fees^[1] 12:4</div> <div>filed^[2] 3:13,15</div> <div>find^[2] 3:14 6:2</div> <div>fine^[2] 12:4,5</div> <div>firm^[1] 4:25</div> <div>first^[3] 3:12,16 12:22</div> <div>five^[1] 11:21</div> <div>focusing^[1] 10:1</div> <div>follow^[1] 5:5</div> <div>following^[1] 12:13</div> <div>follows^[2] 11:19 12:6</div> <div>food^[1] 4:5</div> <div>former^[1] 9:11</div> <div>forth^[1] 10:13</div> <div>forthright^[1] 6:5</div> <div>four^[1] 4:3</div> <div>friday^[1] 9:21</div> <div>front^[1] 6:5</div> <div>full^[5] 2:5,20 5:17 6:16 8:16</div> <div>full-time^[2] 5:14 7:13</div> <div>fully^[1] 8:18</div> <div>funds^[1] 10:9</div> <div>future^[1] 10:12</div> <div>G</div> <div>gave^[1] 2:19</div> <div>gets^[2] 7:11,19</div> <div>getting^[3] 2:7 5:13 7:2</div> <div>given^[1] 13:20</div> <div>giving^[3] 5:3 13:2,12</div> <div>google^[1] 8:23</div> <div>graduate^[1] 9:8</div> <div>great^[1] 4:11</div> <div>gretchen^[2] 1:4 11:3</div> <div>groups^[1] 7:15</div> <div>growing^[1] 4:14</div> <div>guarantee^[1] 11:13</div> <div>guilty^[1] 1:15</div> <div>H</div> <div>handle^[2] 11:7,9</div> <div>hard^[2] 4:6 10:4</div> <div>haver^[1] 3:24</div> <div>havner^[13] 1:4,6,12,18,20,24 4:1 6:7,8 10:14 12:21 13:1,10</div> <div>health^[1] 2:6</div> <div>heard^[1] 3:17</div> <div>heart^[2] 8:6 9:13</div> <div>held^[1] 13:10</div> <div>help^[3] 4:5,12 10:10</div> <div>helping^[2] 4:17 7:16</div>
---	---	--	---

<p>story ^[1] 5:1</p> <p>onorable ^[1] 1:2</p> <p>our ^[2] 10:7 11:3</p> <p>ours ^[1] 8:25</p> <p>ouse ^[1] 4:7</p> <p>ouston ^[1] 11:6</p> <hr/> <p>I</p> <hr/> <p>important ^[2] 8:6 10:15</p> <p>iposed ^[1] 5:11</p> <p>carceration ^[1] 5:16</p> <p>clined ^[1] 5:5</p> <p>cluding ^[1] 12:2</p> <p>come ^[2] 5:25 6:2</p> <p>dependent ^[3] 2:2 3:1 7:14</p> <p>determinate ^[1] 11:20</p> <p>licated ^[2] 2:24 6:23</p> <p>dicates ^[1] 2:1</p> <p>itially ^[1] 8:20</p> <p>stead ^[1] 9:20</p> <p>urance ^[2] 9:23,24</p> <p>tended ^[1] 8:19</p> <p>tends ^[1] 4:17</p> <p>rin ^[2] 4:2,2</p> <p>sue ^[1] 4:19</p> <p>sues ^[3] 2:6 10:24 12:17</p> <hr/> <p>J</p> <hr/> <p>I ^[6] 5:11 6:10 7:2,10 13:6,13</p> <p>b ^[3] 3:17 7:13 8:20</p> <p>bs ^[1] 10:7</p> <p>el ^[1] 4:2</p> <p>dith ^[1] 1:2</p> <p>ly ^[4] 3:4 6:12 9:6,22</p> <p>ne ^[2] 3:3 6:12</p> <hr/> <p>K</p> <hr/> <p>ds ^[1] 10:12</p> <p>own ^[1] 7:3</p> <hr/> <p>L</p> <hr/> <p>oor ^[1] 10:5</p> <p>ce ^[2] 1:1 9:11</p> <p>otop ^[1] 10:6</p> <p>st ^[6] 3:11 4:5,6,22 8:15,20</p> <p>ie ^[1] 9:22</p> <p>er ^[1] 6:1</p> <p>t ^[2] 11:5,5</p> <p>ngth ^[1] 5:1</p> <p>ə ^[1] 4:14</p> <p>ited ^[1] 12:3</p> <p>erally ^[1] 10:4</p> <p>le ^[1] 3:18</p> <p>ed ^[1] 10:4</p> <p>ing ^[1] 2:5</p> <p>ng ^[2] 7:7 12:18</p> <p>oked ^[1] 9:24</p> <p>oking ^[1] 10:10</p> <p>: ^[4] 4:4,12,12,13</p> <p>ve ^[1] 4:10</p> <p>np ^[3] 7:19,21 8:19</p> <p>nch ^[1] 11:3</p> <hr/> <p>M</p> <hr/> <p>aintain ^[3] 5:17,17 8:22</p> <p>aintenance ^[1] 11:9</p>	<p>man ^[3] 4:8,14,15</p> <p>march ^[4] 2:22 6:12 10:16 12:6</p> <p>mary ^[1] 9:13</p> <p>matter ^[2] 1:6 13:5</p> <p>mean ^[7] 9:18 10:6,13,23 11:4,10 13:20</p> <p>means ^[1] 11:25</p> <p>medical ^[3] 9:22,23,24</p> <p>melissa ^[2] 4:2 10:22</p> <p>mentioned ^[1] 9:5</p> <p>mess ^[1] 9:10</p> <p>microsoft ^[1] 9:3</p> <p>minimal ^[1] 5:11</p> <p>minimum ^[1] 8:18</p> <p>minor ^[1] 12:1</p> <p>missed ^[1] 11:9</p> <p>mom ^[1] 9:6</p> <p>money ^[6] 6:5 7:8 10:10,17 11:14 12:23</p> <p>monitor ^[4] 5:7 10:25 12:19 13:6</p> <p>month ^[10] 6:3,14,17 7:17,20 8:17, 24 10:18 12:14,14</p> <p>months ^[2] 6:10 11:23</p> <p>most ^[1] 6:12</p> <p>mother ^[1] 4:3</p> <p>much ^[1] 4:11</p> <p>myself ^[1] 4:18</p> <hr/> <p>N</p> <hr/> <p>names ^[1] 7:16</p> <p>nature ^[1] 7:18</p> <p>necessary ^[1] 9:12</p> <p>need ^[2] 7:8 9:16</p> <p>needed ^[1] 6:24</p> <p>needs ^[3] 4:8 5:13 8:8</p> <p>never ^[3] 2:24 6:4,4</p> <p>new ^[2] 9:3 10:6</p> <p>next ^[2] 1:6 2:9</p> <p>nightmare ^[1] 4:16</p> <p>nobody ^[1] 9:4</p> <p>non-support ^[1] 1:16</p> <p>nothing's ^[1] 3:5</p> <p>number ^[1] 8:23</p> <hr/> <p>O</p> <hr/> <p>obtain ^[1] 5:17</p> <p>obviously ^[2] 6:25,25</p> <p>october ^[2] 1:25 7:25</p> <p>offense ^[2] 12:1 13:9</p> <p>offered ^[1] 9:12</p> <p>oftentimes ^[1] 7:19</p> <p>old ^[1] 9:5</p> <p>ongoing ^[5] 2:11,11 5:18 11:9 12: 14</p> <p>online ^[1] 6:1</p> <p>opportunity ^[4] 3:19 8:19,25 11: 10</p> <p>optimization ^[1] 8:23</p> <p>option ^[1] 9:11</p> <p>order ^[3] 9:9 11:19 12:20</p> <p>ordered ^[1] 7:24</p> <p>ors ^[1] 12:23</p> <p>outstanding ^[2] 2:1,2</p> <p>own ^[3] 3:3 9:4,17</p> <p>owned ^[1] 5:25</p>	<p>P</p> <hr/> <p>paid ^[10] 2:3,22 3:3,5 4:6 7:19,21 10:8,16 12:15</p> <p>parole ^[1] 11:24</p> <p>part ^[3] 5:2,20 11:11</p> <p>past ^[5] 4:3 8:5,11 10:20 12:23</p> <p>pay ^[12] 2:4,11,21 3:5 7:8,22 8:16, 18,19,24 10:11 12:13</p> <p>paying ^[3] 6:20 7:17 11:2</p> <p>payment ^[5] 6:11,14,17 8:18 10:18</p> <p>payments ^[10] 3:2,15 4:23 5:15 6: 11,13,16,24 7:20 9:21</p> <p>pays ^[1] 5:18</p> <p>people ^[1] 9:10</p> <p>per ^[2] 8:25 12:14</p> <p>period ^[4] 7:7 10:3 11:12 13:11</p> <p>permission ^[1] 2:6</p> <p>phone ^[1] 7:3</p> <p>place ^[3] 2:24 6:5 11:23</p> <p>placed ^[1] 12:2</p> <p>plaintiff ^[1] 1:3</p> <p>plan ^[1] 2:21</p> <p>planned ^[1] 9:11</p> <p>plate ^[1] 5:14</p> <p>plea ^[6] 1:15 2:23 4:23 6:15,18 10: 16</p> <p>plenty ^[1] 3:6</p> <p>point ^[4] 2:16 4:25 5:11 10:15</p> <p>position ^[2] 5:4 10:5</p> <p>potential ^[1] 9:1</p> <p>pre-sentence ^[3] 1:16 2:16 5:9</p> <p>present ^[1] 3:11</p> <p>presiding ^[1] 1:2</p> <p>prison ^[1] 11:20</p> <p>probation ^[7] 5:6,6 8:17 11:23,24 12:6,17</p> <p>problem ^[1] 9:22</p> <p>problems ^[2] 9:23 12:23</p> <p>prostate ^[1] 9:23</p> <p>pursuant ^[1] 4:23</p> <p>putting ^[1] 7:10</p> <hr/> <p>Q</p> <hr/> <p>quickly ^[1] 6:24</p> <hr/> <p>R</p> <hr/> <p>ranking ^[1] 8:23</p> <p>reach ^[1] 2:25</p> <p>real ^[2] 10:9,10</p> <p>realizes ^[1] 8:6</p> <p>really ^[1] 5:23</p> <p>reason ^[5] 5:2 7:24 8:10,11 13:3</p> <p>received ^[1] 2:16</p> <p>recently ^[1] 9:3</p> <p>recommend ^[1] 4:24</p> <p>recommendation ^[3] 4:21 5:5,9</p> <p>recommended ^[1] 5:3</p> <p>recommending ^[1] 5:10</p> <p>recovery ^[4] 2:12,25 3:3 12:15</p> <p>referring ^[1] 10:22</p> <p>regular ^[1] 7:4</p> <p>regularly ^[1] 6:6</p> <p>relationship ^[1] 4:11</p> <p>release ^[1] 12:13</p> <p>released ^[2] 5:16 13:5</p>	<p>remind ^[1] 3:4</p> <p>reminded ^[1] 6:23</p> <p>rent ^[1] 4:6</p> <p>report ^[7] 1:17 2:17 5:9,21,24 6:1 11:1</p> <p>requested ^[1] 13:4</p> <p>requesting ^[2] 1:24 13:1</p> <p>required ^[3] 5:17 8:18 10:2</p> <p>respect ^[1] 9:4</p> <p>respectful ^[1] 9:9</p> <p>restitution ^[2] 12:6,12</p> <p>reviewed ^[2] 1:16,18</p> <p>richardson ^[18] 1:7,13,14,18 2:1 3: 25 4:17 6:9 7:5 8:5,13,14 10:21 11:15,17 13:2,14,16</p> <p>richardson's ^[1] 4:3</p> <p>riley ^[1] 9:25</p> <p>room ^[1] 9:12</p> <p>roommate ^[1] 9:11</p> <p>rozycki ^[16] 1:3,9,9,21,22 2:13,19 3:9,22 4:21,22 12:8,11,18,25 13:8</p> <p>rozycki's ^[1] 6:9</p> <p>runs ^[1] 7:15</p> <hr/> <p>S</p> <hr/> <p>salt ^[2] 1:1 9:11</p> <p>salt lake city ^[1] 1:1</p> <p>saying ^[2] 2:20 7:6</p> <p>says ^[3] 5:24 6:2 8:2</p> <p>schedule ^[1] 2:10</p> <p>scheduled ^[1] 2:15</p> <p>school ^[1] 9:7</p> <p>scouting ^[1] 4:7</p> <p>search ^[1] 8:22</p> <p>security ^[1] 5:25</p> <p>send ^[1] 9:21</p> <p>sentence ^[4] 8:1 11:11,11,19</p> <p>sentenced ^[1] 3:20</p> <p>sentencing ^[5] 1:15,25 2:14,15 11: 2</p> <p>separate ^[1] 4:18</p> <p>september ^[3] 2:4 3:13 7:23</p> <p>serious ^[2] 8:3 13:14</p> <p>serve ^[5] 5:15 11:20,23 13:6,13</p> <p>served ^[2] 5:12 11:22</p> <p>services ^[5] 2:12,25 3:4 6:1 12:15</p> <p>set ^[5] 2:10,10 9:19,20 10:9</p> <p>several ^[1] 4:5</p> <p>she's ^[1] 9:7</p> <p>short ^[1] 10:3</p> <p>show ^[2] 6:18 8:3</p> <p>showing ^[1] 7:9</p> <p>shown ^[1] 5:7</p> <p>shows ^[1] 10:18</p> <p>signed ^[1] 11:2</p> <p>since ^[7] 3:8,9 6:10,14,17 7:2 10: 15</p> <p>sincerely ^[1] 8:8</p> <p>single ^[6] 6:14,17 7:1,17,20 10:18</p> <p>six ^[1] 6:10</p> <p>son ^[4] 4:17,18 9:17 11:14</p> <p>specialize ^[1] 8:22</p> <p>stabilized ^[1] 2:7</p> <p>start ^[4] 6:19 7:11 9:8 11:2</p> <p>state ^[6] 1:8,9 5:3 9:18 11:20 12:</p>
---	--	---	--

17 state's ^[1] 4:21 step ^[1] 5:13 store ^[1] 11:6 'rengthen ^[1] 4:14 rong ^[1] 4:11 subject ^[1] 12:7 substantial ^[4] 6:11,18,19 10:17 successful ^[1] 12:5 suffered ^[1] 4:10 sum ^[1] 7:21 sums ^[2] 7:19 8:19 supervised ^[2] 5:7 6:22 supply ^[1] 11:6 support ^[5] 5:15,18 7:8 10:8,11 supposed ^[6] 2:22 3:2,5 10:23,24, 24 supposedly ^[1] 5:25 surcharge ^[1] 12:4 survive ^[1] 10:11 suspend ^[1] 12:5 suspending ^[1] 11:21 sustain ^[1] 4:7 <hr/> T <hr/> t.v ^[1] 10:4 table ^[1] 3:25 term ^[1] 11:20 texas ^[4] 2:5 8:21 9:5,13 three ^[2] 4:5,6 throughout ^[1] 6:13 today ^[6] 1:14 3:20 8:1,10 11:11 12:12 took ^[2] 8:20,25 wards ^[2] 5:19 13:2 affic ^[1] 12:1 travel ^[1] 10:13 tried ^[1] 4:19 turned ^[1] 9:6 two ^[3] 9:1,6 10:7 two-year ^[1] 9:5 <hr/> U <hr/> under ^[1] 2:22 understands ^[1] 8:8 union ^[1] 9:19 university ^[1] 9:19 update ^[1] 12:8 urinating ^[1] 9:22 utah ^[3] 1:1 9:8 11:20 <hr/> V <hr/> various ^[1] 7:14 verifiable ^[3] 5:14,24 7:13 via ^[2] 7:3,3 victim ^[4] 3:11,21 7:10 12:4 victim's ^[1] 7:6 visitation ^[1] 4:18 <hr/> W <hr/> ways ^[1] 9:17 website ^[3] 7:15 8:22 11:7 wedding ^[1] 11:6 week ^[4] 8:24,25 9:2 10:4 eeekend ^[1] 10:12 iatsoever ^[1] 12:3	whereupon ^[1] 13:23 whether ^[1] 5:2 wish ^[3] 3:21,22 8:13 within ^[1] 11:12 without ^[2] 4:4 8:1 work ^[7] 2:23 8:25 9:13 10:7 12:17, 19 13:21 worked ^[3] 4:6 8:7 10:4 working ^[3] 2:7 9:7,8 <hr/> Y <hr/> year ^[1] 10:16 years ^[5] 4:3,5,7 10:7 11:21 young ^[2] 4:8,14 <hr/> Z <hr/> zero ^[1] 11:21
---	---